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Letter dated 3 February 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Panama submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 30 January 2006 from the Permanent Representative of Panama to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I am pleased to submit herewith the response of the Government of Panama to your letter of 2 December 2005 in which you request further information on the status of implementation of resolution 1373 (2001).

(*Signed*) Ricardo Alberto **Arias**
Ambassador
Permanent Representative

Fifth report regarding implementation of Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 **The Committee considers criminalization of the financing of terrorism to be a priority for the implementation of paragraph 1 (b) of resolution 1373 (2001). In its third report, Panama indicates that it is including the financing of terrorism as a new category in Bill No. 163, which has been submitted for consideration by the Legislative Assembly. The Committee would be grateful to receive an update on the status of Bill No. 163 and clarification of whether its provisions would criminalize the supply or collection of funds by Panama's nationals or in its territory by any person and by any means, direct or indirect, with the intention or in the knowledge that these funds are to be used in the commission of terrorist acts,**

- **Whether or not these acts are actually committed;**
- **Whether or not they are actually used to carry out terrorist acts;**
- **Without the need for them to be transferred from one country to another; and**
- **Even if they are legal in origin.**

Bill No. 163 is now part of our legal order, having become a Law of the Republic, better known as **Act No. 50 of 2 July 2003**, which reads as follows:

Act No. 50
(of 2 July 2003)

Which adds Chapter VI, entitled "Terrorism", to Title VII of Volume II of the Penal Code and establishes other provisions.

HEREBY DECREES:

Article 1. Chapter VI, entitled "Terrorism", comprising articles 264 (a), 264 (b), 264 (c), 264 (d) and 264 (e), shall be added to Title VII, on Crimes against Collective Security, of Volume II of the Penal Code, as follows:

Chapter VI
Terrorism

Article 264 (a). Anyone who, acting individually or as a member of, in the service of or in collaboration with armed gangs, organizations or groups whose purpose is to subvert the constitutional order or to cause a serious breach of the peace, commits acts against individuals, property, public services or communications media or transport facilities that produce alarm, fear or terror in the population or a group or sector thereof, by means of explosives, toxic substances, weapons, fire, flood or any other means of violence or mass destruction, shall be subject to 15 to 20 years' imprisonment.

Article 264 (b). Anyone who intentionally finances, subsidizes, conceals or transfers money or assets for use in the commission of any of the acts described in article 264 (a) of this Code, even without participating in such activities or without bringing them to fruition, shall be subject to 15 to 20 years' imprisonment.

Article 264 (c). A sentence of 8 to 10 years' imprisonment shall be imposed on:

1. Anyone who intentionally encourages or assists in activities carried out by individuals or organized groups with the intention of performing any of the acts described in article 264 (a) of this Code, even without participating in such activities;

2. Anyone who conceals, shelters, accommodates or recruits persons to engage in any of the acts described in article 264 (a) of this Code or anyone who joins groups for that purpose.

Article 264 (d). Anyone who, apart from the acts described in article 264 (a) of this Code, promotes or commits acts endangering the life or physical integrity of staff of embassies, missions or Government-accredited international delegations, or the headquarters, physical structures or property thereof, or endangering the life or physical integrity of any person, shall be subject to 10 to 15 years' imprisonment, without prejudice to any other penalties applicable under the provisions of this Code.

Article 264 (e). Anyone who is aware of the existence of persons or groups of persons preparing or helping to plan or implement any of the acts described in article 264 (a) of this Code, or who conceals the whereabouts of the perpetrators of such acts and fails to report this fact to the national authorities, shall be subject to 5 to 10 years' imprisonment.

Article 2. A fifth paragraph shall be added to article 127 of the Judicial Code, as follows:

Article 127. The superior courts shall try at first instance the following cases:

(5) Cases involving terrorist offences.

Article 3. Non-profit associations shall have an obligation to keep track of any funds that they receive, generate or transfer. To that end, they must keep a detailed record of financial operations or transactions and donations, verifying the origin and nature thereof.

Article 4. By virtue of this Act, Chapter VI, entitled "Terrorism", comprising articles 264 (a), 264 (b), 264 (c), 264 (d) and 264 (e), is added to Title VII of Volume II of the Penal Code and a new paragraph (5) is added to article 127 of the Judicial Code.

Article 5. This Act shall enter into force upon its enactment.

It should be made clear that the supply or collection of funds by Panama's nationals or in its territory by any person and by any means, direct or indirect, with the intention or in the knowledge that these funds are to be used in the commission of terrorist acts is indeed currently governed by **Act No. 50 of 2 July 2003**, in particular in its article 264 (b), which states the following:

"**Article 264 (b)**. Anyone who intentionally finances, subsidizes, conceals or transfers money or assets for use in the commission of any of the acts described in article 264 (a) of this Code, even without participating in such activities or without bringing them to fruition, shall be subject to 15 to 20 years' imprisonment."

"**Article 264 (a)**. Anyone who, acting individually or as a member of, in the service of or in collaboration with armed gangs, organizations or groups whose purpose is to subvert the constitutional order or to cause a serious breach of the peace, commits acts against individuals, property, public services or communications media or transport facilities that produce alarm, fear or terror in the population or a group or sector thereof, by means of explosives, toxic substances, weapons, fire, flood or any other means of violence or mass destruction, shall be subject to 15 to 20 years' imprisonment."

It should be pointed out that the aforementioned article does indeed criminalize the collection of funds, monies or assets by any person in its territory, whether or not terrorist acts are actually committed.

The aforementioned article also criminalizes the use of assets or money to commit terrorist acts, whether or not they are transferred from one country to another and even if the money used to finance terrorist acts is legal in origin.

1.2 **Paragraph 1 (c) of resolution 1373 (2001) requires, inter alia, that States should freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The third report mentions measures that can be taken by the Panamanian authorities in order to freeze the funds and assets of individuals and entities, whether resident or non-resident, with links to terrorism. Please clarify whether the freezing of funds and assets held in Panama can take place**

- **Where their owner is suspected of having links to terrorism, even if the funds are not actually being used for the commission of a terrorist act;**
- **At the request of a State that considers the funds to have links to terrorism; and**
- **Where the owner's name appears on an international list of persons or entities with links to terrorist activities.**

Act No. 50 of 2 July 2003, which adds Chapter VI, entitled "Terrorism", to Title VII of Volume II of the Penal Code and establishes other provisions, governs and characterizes as offences criminal acts relating to terrorist acts or the financing thereof in the Republic of Panama. In our country, terrorism and the financing of terrorism are two separate offences to which all preventive measures relating to the freezing and confiscation of assets provided for in our Penal Code apply, as is the case with all serious offences.

Ministry of Foreign Affairs

Panama has signed bilateral conventions, agreements and treaties on mutual legal and judicial assistance in criminal matters with the following countries:

- Colombia
- Mexico

- Spain
- Ukraine
- United Kingdom of Great Britain and Northern Ireland
- United States of America

Panama is also a party to the following multilateral conventions on legal assistance:

- Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.
- Inter-American Convention on Mutual Assistance in Criminal Matters (States parties: Canada, Chile, Colombia, Ecuador, El Salvador, Grenada, Guatemala, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, United States of America and Venezuela).

Public Prosecutor's Office

The Republic of Panama has three clearly defined mechanisms whereby a request for international legal assistance may be submitted by a State that needs such assistance for purposes of an investigation or criminal proceedings, namely:

1. Through the Ministry for Foreign Affairs. The Ministry will send the requests received to the Chamber IV (Sala de Negocios Generales) of the Supreme Court of Justice in accordance with article 101, section 3 of the Judicial Code. In those cases where the request is based upon an international instrument in which the Republic of Panama has specifically designated the Public Prosecutor's Office as the entity responsible for responding to requests for legal assistance, as is the case for drug-related crimes, the Ministry for Foreign Affairs will forward the request to the Public Prosecutor's Office.

2. Through the National Directorate for Treaties on Mutual Legal Assistance under the Ministry of the Interior and Justice. Resolution No. 1446 of 13 September 1991 created the National Directorate for Treaties on Mutual Legal Assistance, placing it under the Ministry of the Interior and Justice and assigning it the function of being the body to receive the requests for mutual legal assistance submitted on the basis of bilateral or multilateral international instruments which explicitly designate the Directorate as having such functions. Examples are the Treaty on Mutual Legal Assistance in Criminal Matters signed between the Republic of Panama and the United States of America or the Treaty on Mutual Legal Assistance in Criminal Matters with the Central American Countries.

3. Through the Public Prosecutor's Office. In the specific case of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, it is stipulated that this office is the authority designated to respond to requests for legal assistance made in accordance with the provisions of article 7 of that Convention. The United Nations Secretariat has been notified of that designation through a communication from the Ministry for Foreign Affairs which has been circulated to all States parties to the Convention.

The responsibilities of the Secretariat for International Matters include the processing of requests for legal assistance made by the departments falling under the

Public Prosecutor's Office in the course of investigations they are pursuing and the processing of requests made by legal or investigative authorities of other States.

Legal assistance between States may be based either on an international agreement or on the principle of reciprocity. It includes the performance of such procedures as hearing testimony and statements; procuring documents, dossiers and items of evidence; fulfilment of requests for raids and seizures; movement of persons detained for the purposes of giving testimony; serving of papers; location of persons; exchange of information, et cetera. The response to those requests must be in conformity with the stipulations of the national legislation in force.

Ministry of the Interior and Justice

National Directorate for Treaties on Mutual Legal Assistance

As part of the policy to combat organized crime and based on the statistics of the investigative bodies of the Republic of Panama, the necessary efforts are being made to establish bilateral agreements on mutual legal assistance with those countries with which we do not yet have such an agreement, thereby improving our efforts to combat money-laundering and financing of terrorism.

The Ministry of the Interior and Justice, through the National Directorate for Treaties on Mutual Legal Assistance, produces monthly and annual statistics on the effectiveness and efficiency with which all requests for mutual legal assistance are handled, including those relating to the freezing, seizure and confiscation of assets. These statistics cover all matters to do with money-laundering, predicate offences and the financing of terrorism, whether admitted or denied.

The Republic of Panama provides very wide and effective cooperation by way of the National Directorate for Treaties on Mutual Legal Assistance. Countries must be capable of providing the widest range of mutual legal assistance in investigations, indictments and similar proceedings in the area of money-laundering and the financing of terrorism. Mutual legal assistance must include the following: (a) submission of, search for and seizure of information, documents or evidence, (including financial records) of financial institutions or other natural or legal persons; (b) taking of evidence, financial statements or other statements from natural persons; (c) delivery of originals or copies of relevant documents and records as well as any other information and items of evidence; (d) the efficient service of legal documents; (e) facilitation of the voluntary appearance of persons for purposes of providing information or testimony, on behalf of the country making the request; and (f) identification, freezing, seizure or confiscation of assets laundered or attempts to launder them, of profits from money-laundering and of assets used for, or attempts to use them for, financing terrorism, and also of the instruments of such offences and assets of corresponding value.

The request for legal assistance is based on the existence of a punishable act, and relies on the principle of double incrimination, in other words that the criminal conduct constitutes a crime both in the requested and the requesting State.

A request for mutual legal assistance cannot be rejected solely on the grounds that it is considered that taxation matters are also involved in the offence.

The request must be finalized by the Public Prosecutor's Office. The National Directorate for Treaties on Mutual Legal Assistance acts as quickly as possible to

complete the process of accepting requests relating to the identification, freezing, seizure or confiscation of:

(a) laundered property resulting from;

(b) assets derived from;

(c) instruments used in; or

(d) instruments attempted to be used in

the perpetration of a crime of money-laundering, financing of terrorism, or other predicate offence.

The mechanisms to coordinate seizure and confiscation operations with other countries are covered in the treaties on mutual legal assistance referred to above.

1.3 **In its second and third reports, Panama mentions the existence of regulatory measures for financial institutions' reporting of irregularities and suspicious transactions. How does Panama ensure that these institutions meet their reporting obligations? The Committee would also appreciate information on the effectiveness of the aforementioned regulatory measures and the extent to which Panama successfully identifies non-compliers.**

The Financial Analysis Unit has devised report forms for each reporting entity, in accordance with the nature of its operations and based on the transactions its clients carry out, for amounts above US$ 10,000 (10,000 balboas) or adding up to that amount during a business week. Those reports are submitted monthly to the FAU through each of the monitoring and control bodies of the various reporting entities.

In addition to the reports mentioned in the preceding paragraph, there is a form known as UAF-SOS for reporting suspicious or irregular transactions which is submitted directly to FAU by the reporting entity when it identifies any suspicious transaction, regardless of the amount. It should be noted that this report is accompanied by all relevant documentation allowing identification and analysis of clients and the transactions they are conducting.

Each of the forms described comes with instructions, which also include practical examples showing the user the procedures for including the information requested.

The FAU together with the monitoring and control agencies has set itself the task of disseminating to the reporting entities the reporting obligations contained in legislation and information concerning the use of forms, reporting procedures and the importance of sending adequate financial information to FAU. In addition, FAU holds regular evaluation and coordination meetings with monitoring and control bodies and with reporting entities.

Some of the results obtained through these meetings include: holding of seminars, review and update of reporting forms, and guidance on schemes for money-laundering and financing of terrorism.

During the process of analysing the reports on suspicious transactions and its other duties, the FAU has access to a number of sources of information, which include other official agencies of the State in either administration, investigation or intelligence.

Such access is provided by consulting the electronic databases of some government institutions, or in other cases through written request to the agencies. In any event, FAU is authorized to request information from official agencies and can also require it from reporting entities in the financial and commercial sector: banks, trust companies, exchange and remittance offices and natural or legal persons conducting currency exchange or remittance activities, whether or not it is their main activity, finance companies, savings and loan cooperatives, stock exchanges, stock markets, securities firms, stockbrokers and investment managers, businesses established in the Colón Free Zone, other free zones and processing zones, the National Beneficiary Lottery, casinos and other establishments engaged in betting and games of luck and chance, real estate promotion and brokerages and insurance and reinsurance companies and reinsurance brokers.

Those which do not comply with the reporting obligations contained in Act. No. 42 are subject to monetary penalties from $5,000 to $1,000,000 depending on the seriousness of the offence.

The monitoring and control bodies conduct inspections to verify that the companies being monitored are reporting properly through the channels established in the Act on Prevention. They may do so ex officio or on the request of the Financial Analysis Unit.

By law, the Financial Analysis Unit must maintain up-to-date statistics on the ALD-CFT system. Currently, an investigation is being conducted on the number of reports of suspicious transactions received and which sectors under regulation are reporting greater and lesser numbers, so that appropriate measures can be taken.

1.4 **The Committee notes that Panama has legal provisions and circulars that set out guidelines for the reporting of suspicious transactions by the financial sector. What regulations govern reporting by the legal and accounting sectors and how is their application monitored?**

This does not apply, as currently these sectors are not regulated under the Act on Prevention of Laundering of Money and Capital, and they are not legally required to report suspicious transactions directly.

1.5 **In its fourth report, Panama describes the structure and funding of its Financial Analysis Unit for the Prevention of Money-laundering (FAU). The Committee would welcome additional information on how this unit undertakes its functions, the extent of its cooperation with the other competent authorities in Panama, the extent to which it shares information with the financial intelligence units (FIUs) of other States and how it cooperates with them.**

The Financial Analysis Unit was established by Executive Order No. 136 of 9 June 1995, for the purpose of gathering from public institutions all financial information coming both from government entities and from individuals involved in commercial transactions that could be linked to laundering of proceeds from drug trafficking.

"FIRST: The Financial Analysis Unit (FAU) for the Prevention of the Crime of Money-laundering the Proceeds of Narcotics Trafficking shall be established, *attached to the Council for Public Security and National Defence*" (emphasis ours).

The Financial Analysis Unit is attached to the Council for Public Security and National Defence (CPSND), an advisory body to the President of the Republic on matters of public security and national defence.

In practice, the Financial Analysis Unit operates in coordination with the CPSND and depends on it financially. That body in turn receives its funding from the Ministry of the Presidency, as established by Decree No. 136 of 1995 establishing the Financial Analysis Unit.

The Council for Public Security and National Defence was established by Cabinet Decree No. 38 of 10 February 1990, which governs the organization of the police forces of the Republic of Panama.

"ARTICLE SIXTEEN: An advisory body to the President of the Republic relating to public security and national defence shall be established which shall be called the Council for Public Security and National Defence. This Council shall be presided over by the President of the Republic and comprised of the Minister of the Interior and Justice, the Minister for Foreign Affairs and the Minister of Planning and Economic Policy, who shall be assisted by the Heads of the various services of the public security forces as deemed appropriate. The President of the Republic shall appoint the Executive Secretary of this body, who shall keep him informed on matters of public security and national defence and shall prepare reports on the topics addressed by the Council as appropriate."

Executive Order No. 78 of 5 June 2003, amending Executive Order No. 163 of 3 October 2000, made changes in the nomenclature of FAU, adding the term and function of preventing the financing of terrorism as part of the responsibilities of the Financial Analysis Unit of the Republic of Panama.

"Article 2: The following shall be the functions of this Unit:

(a) Gather from public institutions and private reporting entities all information related to financial, commercial or business transactions that could be linked to the crime of laundering of capital and financing of terrorism, in accordance with the laws in force which regulate these matters in the Republic of Panama.

(b) Analyze the information obtained in order to identify suspicious or unusual transactions, as well as operations or patterns of laundering of capital and financing of terrorism.

(c) Keep statistics on the movement of cash in the country relating to the laundering of capital and financing of terrorism.

(d) Exchange information with counterpart bodies of other countries for the analysis of cases that can be related to laundering of capital and financing of terrorism, upon signing memorandums of understanding or other cooperation agreements with these bodies.

(e) Provide the Attorney-General directly with the information when in the opinion of the Financial Analysis Unit an investigation should be conducted by the Public Prosecutor's Office.

(f) Provide the investigative staff of the Public Prosecutor's Office and the designated officials in the Superintendency of Banks of Panama with any assistance they require in the analysis and supply of information and intelligence that may

assist in criminal or administrative investigations on acts and offences related to laundering of capital and financing of terrorism."

In addition, article 2 of Act No. 42 of 2 October 2000, which establishes measures for the prevention of the offence of laundering of capital, authorizes the FAU to request information from reporting bodies and monitoring and control bodies in the exercise of its functions.

The article states:

"Article 2. The Superintendency of Banks and other monitoring and control bodies of each activity are expressly authorized, as well as the individuals concerned, to cooperate with the Financial Analysis Unit in the exercise of its duties and the provide it, *on its request* or on their own initiative, with any available information that might lead to the prevention of the commission of the offence of laundering of capital, in order for the Financial Analysis Unit to be able to examine and analyze the information" (emphasis ours).

The Financial Analysis Unit in Panama may request the reporting bodies, once they have reported on a suspicious operation, to submit to it additional documentation or information needed for the adequate study of the cases under analysis. The situation described above is not just a function of FAU, but an obligation for reporting bodies, in accordance with what is laid down in the laws and regulations in the field.

When reporting a suspicious operation, the reporting body is required to update FAU on any relevant situation or movement which arises in connection with the account or the relationship between the reporting body and the client, for example, opening of new accounts, whether by the reported client or linked to it, closing of accounts or any other action relevant to the analysis.

The Panamanian FAU can give information only to the Attorney-General, the investigative staff of the Public Prosecutor's Office and officials of the Superintendency of Banks.

In the case of the Attorney-General and investigative officials, the FAU may only provide intelligence information for the initiation or follow-up of a criminal investigation regarding crimes of financing of terrorism and laundering of capital or related offences, that is, activities related to drug trafficking, fraud, illicit arms trafficking, trafficking in persons, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, theft or international trafficking in vehicles, or offences involving intellectual property.

The purpose of assistance to and exchange of information with the Superintendency of Banks is to support it in any administrative investigations it may be conducting relating to the illegal activities listed in the preceding paragraph (article 2 (f) of Executive Order No. 78 of 2003).

The independence and autonomy mentioned, for the purpose of ensuring the absence of undue influence or interference, is essential to enable financial intelligence units to do their work free of pressure, interference and any other type of participation by public or private entities, whether local or international.

The information managed by FAU-Panama is handled with a high degree of confidentiality towards local and international institutions. It is shared, when

appropriate, only with the authorities of the Public Prosecutor's Office on its request or after analysis of the cases, when it is deemed appropriate to transmit it to that office or to another FAU with which it has signed a memorandum of understanding.

The confidential treatment of information is regulated by the following legal provisions:

- Paragraphs (e) and (f) of Executive Order No. 78 of 2003 amending Executive Order No. 163 of 2000;
- Article 5 of Executive Order No. 163 of 2000;
- Article 6 of Executive Order No. 136 of 1995.

The transmission of information by the Financial Analysis Unit to local authorities is subject to strict controls, as is the transmission of information to the financial intelligence units of other countries. In the latter case, the data are transmitted via the Egmont Secure Web.

The Financial Analysis Unit is currently finalizing several projects aimed at digitizing the information coming from reporting entities and eliminating the physical submission of data to the Unit. The completion of these projects will minimize the risk that information can be accessed by third parties.

The Financial Analysis Unit has been a member of the Egmont Group since 1997. The participation of financial intelligence units in this group is crucially important for the achievement of the goals set by these institutions, since by belonging to the Group, they familiarize themselves with the community of international institutions involved in the prevention and suppression of the crime of money-laundering and financing of terrorism.

The Financial Analysis Unit of Panama has fully met the Egmont Group criteria in relation to the purposes and the principles concerning the role and functions of financial intelligence units and the mechanisms for information exchange between financial intelligence entities for money-laundering and terrorism-financing cases. Accordingly, all the laws enacted and amended in Panama since it became a member of the Egmont Group have been drafted taking into account those principles. Similarly, all memorandums of understanding subscribed with counterpart units have been framed by the Group's purposes and principles.

This measure is considered necessary in order to standardize the language used by the financial intelligence units that are, or that aspire to be, members of the Egmont Group. Observance of the principles and purposes of the Group also enables financial intelligence units to maintain a balance in regard to the terms and conditions agreed in memorandums of understanding. In other words, without strict compliance with those principles, conflicts could arise between some financial intelligence units in the event that any of them were to attempt to enter into memorandums of understanding or cooperation agreements under conditions that favoured one party over the other.

In that regard, the Financial Analysis Unit periodically conducts one-day training events and meetings with other public and private entities responsible for evaluating new schemes and modalities being used by criminal organizations to commit the crimes of money-laundering and financing of terrorism. Such training events and meetings are carried out with representatives of the oversight and

monitoring agencies, through the prevention units created within each agency, and with representatives of the judicial branch, the Public Prosecutor's Office and reporting entities, through their compliance departments and the rest of their staff.

The current organizational structure of the Financial Analysis Unit comprises an Executive Office and four departments: the Legal Department, the Analysis Department, the Information Capture Department and the Technical Support Department. Its structure also includes a General Secretariat and an Office of General Services.

A total of 20 officials serve in the Financial Analysis Unit. They are part of the staff of the Council for Public Security and National Defence of the Office of the President of the Republic of Panama.

As concerns the professional profile of the staff serving in the Unit, they have academic training and broad experience in the fields of law, accounting, finance, banking, economics and technology. The staff participate continually in training events on topics relating to the prevention, control and suppression of money-laundering and financing of terrorism.

As has been noted, one of the primary objectives for the Financial Analysis Unit is training and acquisition of advanced technology for the analysis of suspected money-laundering and terrorism-financing operations.

These training events encompass aspects relating not only to current legislation but also to joint participation in offence classification exercises with other authorities responsible for the prevention and suppression of crime.

Finally, the Financial Analysis Unit maintains statistics on exchanges of information with counterpart entities and other activities undertaken in the performance of its functions, such as responses to official inquiries received from staff responsible for pre-trial proceedings within the Public Prosecutor's Office, imposition of fines on reporting entities for violations of anti-money-laundering laws and training offered to and received by Unit staff.

Memorandums of understanding between the Financial Analysis Unit of Panama and financial intelligence units of other countries

Caribbean: Bahamas, Barbados, Bermuda, Dominican Republic, Haiti, Netherlands Antilles, Saint Vincent and the Grenadines;

Central America: Costa Rica, El Salvador, Guatemala, Honduras;

Europe: Belgium, Bulgaria, Croatia, France, Georgia, Germany, Italy, Monaco, Portugal, Russian Federation, Spain, Ukraine, United Kingdom of Great Britain and Northern Ireland;

South America: Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Venezuela;

Other regions: Australia, Canada, Israel, Mexico, South Africa, United States of America.

1.6 **In its third report (p. 7), Panama stated that Preliminary Bill No. 162 regulating the operations of money transfer agencies was awaiting approval by the President of the Republic. The Committee would appreciate an update on**

the status of the bill and would like to know what administrative mechanisms are employed to detect and prevent unauthorized or unsupervised entities from operating and from transferring funds and assets into and out of Panama pending its adoption.

This draft law is being negotiated with the entities it would regulate: the money transfer agencies authorized to operate in the Republic of Panama. At present, the Directorate of Financial Services Companies receives any complaints lodged in this area and conducts investigations to verify that the regulated agencies or companies engaged in this business are complying with the provisions of Act No. 48 of 2003, which regulates the operations of money transfer agencies in the Republic of Panama and establishes the corresponding prevention and suppression mechanisms.

1.7 **In order effectively to implement paragraph 1 (d) of resolution 1373 (2001), States should have in place mechanisms to register, audit and monitor the collection and use of funds and other resources by charitable and similar non-profit organizations in order to ensure that they are not diverted from their stated purposes. The Committee would appreciate information on:**

- **Monitoring in the field, where the funds are received, and the extent to which the competent authorities cooperate and coordinate their efforts in order to track funds and other resources received by organizations and to prevent their diversion for terrorist purposes; and**
- **The safeguards in place to prevent funds collected by non-profit organizations from being diverted for terrorist purposes abroad and cooperation and exchanges with the authorities of other States in that regard.**

Special Recommendation VIII of the Special Recommendations on Terrorist Financing of the Financial Action Task Force on Money-laundering, pertains to the non-profit organizations recognized by resolution of the Ministry of the Interior and Justice.

Article 3 of Act No. 50 of 2 July 2003 "adding chapter VI, entitled 'Terrorism', to section VII of the second volume of the Criminal Code and establishing additional provisions", stipulates: "Non-profit organizations shall have the obligation to keep records of the funds they receive, generate or transfer. To that end, they shall keep a detailed log of all financial operations and transactions and of donations, substantiating their origin or nature." However, the legislation does not establish the entity responsible for monitoring compliance with this provision, and this institution is therefore studying the possibility of amending it.

Executive Order No. 524, issued on 31 October 2005 pursuant to article 3 of Act No. 50 of 2 July 2003, regulates recognition of the legal status of private non-profit organizations and foundations.

This Executive Order empowers the Ministry of the Interior and Justice to recognize or deny recognition of the legal status and oversee the operations of private non-profit organizations and foundations; churches, congregations and other religious communities or organizations; federations and any other organization not concerned with sports, agriculture, cooperatives or labour matters.

It also authorizes the creation of an office under the Ministry of the Interior and Justice for the purpose of keeping records of the activities of non-profit organizations and foundations.

Article 13 of the aforementioned Executive Order stipulates: "Any funds received by legally established entities recognized by the Ministry of the Interior and Justice from foreign governments, national or international institutions, or other sources, channelled through public institutions, shall be considered to be of a public nature, and their management, purpose and use shall therefore be subject to oversight by the Ministry of the Interior and Justice and the Office of the Comptroller General and to the relevant laws in force."

Article 14 stipulates: "Any funds obtained by legally established entities recognized by the Ministry of the Interior and Justice for the implementation of projects of public interest shall be deposited in bank accounts in public financial institutions. Both these bank accounts and any movements of funds therefrom shall be subject to approval and oversight by the Office of the Comptroller General.

"The entity may utilize funds derived from its own internal operations in accordance with its articles of association. Any entities that handle funds derived from donations of public interest shall be obliged to submit to the sponsoring organizations monthly financial and technical reports on the progress, rationale and management of any projects undertaken and compliance with technical requirements at the mid-point and at the conclusion of the projects.

"The entity shall also maintain all relevant documentation in its offices so that, when necessary, inspections required by the Ministry of the Interior and Justice and by the Office of the Comptroller General may be carried out".

Article 15 stipulates: "When there is information indicating that a legally established entity may be engaged in activities that are unlawful or contrary to the objectives and aims established under its articles of association, the Ministry of the Interior and Justice shall take the necessary steps to revoke the legal status of or dissolve the entity and lodge criminal complaints with the competent authorities, depending on the nature of the case".

Hence, it is the responsibility of the Ministry of the Interior and Justice and the Office of the Comptroller General to supervise, oversee and regulate the financial transactions and operations of duly established non-profit organizations and foundations and the management of funds that they receive in the form of donations.

1.8 **Does Panama have a witness protection programme? If so, please describe any special features of that programme which relate to cases involving terrorism.**

Act No. 48 of 30 August 2004, which characterizes as offences gang membership and the possession of and trade in illegal arms, provides measures to protect the identity of witnesses and modifies provisions of the Penal and Judicial Codes. Act No. 40 of 1999 establishes the following in article 6:

"Article 6. Article 2121-A shall be added to the Judicial Code as follows:

To protect the identity of witnesses who give evidence in criminal proceedings, the investigating official or judge can, ex officio or by ex parte application, order the adoption of any of the following measures:

1. Omit from proceedings personal details or any other information which could be used to identify the witness, using instead numbers or any other code which identifies them.

2. Allow them to appear for any part of the proceedings in clothing or devices which make it impossible to identify them visually.

3. For the purposes of summonses and notifications, establish the witness's domicile as the office of the investigating official or the court where the case will be heard.

In addition to the above, the investigating official or judge can order the necessary measures to conceal the witness's identity, domicile, profession, trade or workplace.

In no case will the measures provided for in this article infringe the accused's right to a defence and the principle of adversarial proceedings.

The application of these measures will depend on the degree of risk or danger to the witness, his spouse, parents, children or siblings."

The provisions of the aforementioned act attest to the fact that there is indeed legislation on the protection of witnesses, which is also applicable to cases (witnesses) related to terrorism.

Effectiveness of controls preventing access to weapons by terrorists

1.9 **With respect to paragraph 2 (a) of the resolution on eliminating the supply of weapons to terrorists, Panama has provided information on the relevant provisions of its Penal Code and of various decrees. The Committee would appreciate additional information on:**

- **Safeguards to prevent the transfer of weapons from licensed persons or entities to terrorists and other groups; and**
- **Measures employed to prevent the illegal cross-border movement of arms, ammunition and other weapons.**

The safeguards used by the Republic of Panama to prevent the transfer of weapons from licensed persons or entities to terrorists and other groups fall within the framework of the legislation and regulations on the possession of weapons.

In this respect, it should be pointed out that the Republic of Panama adopted Act No. 48 of 30 August 2004, which characterizes as offences gang membership and possession of and trade in prohibited weapons, provides measures to protect the identity of witnesses and amends provisions of the Penal and Judicial Codes and Act No. 40 of 1999, which in article 5 establishes the following:

> "Chapter VII, entitled Possession of and Trade in Prohibited Weapons, shall be added to Title VII of Book II of the Judicial Code as follows:
>
> Article 264-J. Anyone who illegally manufactures, imports, stockpiles, transports, traffics or trades in firearms, their components or ammunition in Panama will be subject to seven to nine years' imprisonment.
>
> This sentence will be increased to eight to ten years' imprisonment in the case of importing, stockpiling, transporting or illegally trafficking in weapons

of war, their components or ammunition, or if the purpose of such behaviour is to remove them from the country or to commit terrorist acts.

The same sentence will be imposed on anyone who uses false or forged documents domestically or abroad to purchase, sell or transfer, in any capacity, firearms or weapons of war, or anyone who does so on behalf of the Panamanian State without legal authorization, or anyone who is authorized but does not adhere to the legal provisions in force."

Similarly, Executive Order No. 145 of 29 March 2005, issued by the Ministry of the Interior and Justice, "establishing the National Multidisciplinary Commission of the Republic of Panama for the Control of the Illicit Trade in Small Arms and Light Weapons, Ammunition, Explosives and other Related Materials", was recently approved.

This is an advisory and technical body of the Panamanian State, whose function will be to carry out studies on this problem and develop proposals for public policy on issues related to the control and regulation of the illicit trade in weapons, ammunition, explosives and other related materials.

The Commission's membership spans governmental institutions, civil society, non-governmental organizations and the country's security forces.

The current Government plans to incorporate all regulations on the control and regulation of firearms, ammunition, explosives and other related materials into a single legal instrument, and is consequently working on a bill to be submitted for discussion to the National Assembly.

With regard to the measures employed to prevent the illegal cross-border movement of arms, ammunition and all other weapons, the Government of Panama pays special attention to the question of border security.

Thus, the maintenance of border control is a priority for the Panamanian Government.

Panama has adopted a series of measures at the national level to prevent illegal cross-border movement:

- The Panamanian National Police exerts major efforts to prevent and reduce the incidence of illegal activities, such as the illegal cross-border movement of arms, by increasing manpower, carrying out constant patrols and establishing mobile and permanent patrol posts. The National Police destroys any infrastructure it detects which suggests the presence of illegal groups in a particular area.
- Greater inter-institutional coordination has been achieved to deal efficiently with threats to national security and with a view to establishing a centralized command and control system.

Panama has implemented cooperation mechanisms with Colombia with a view to minimizing this type of illegal movement.

Effectiveness of international cooperation in criminal matters

1.10 **Pursuant to paragraph 2 (b) of the resolution, States should take the necessary steps to prevent the commission of terrorist acts, including through**

the provision of early warning and the exchange of information with other States. In its second report (p. 17), Panama indicates that it exchanges information with the International Criminal Police Organization (Interpol) and that the Executive Secretariat of the Council for Public Security and National Defence maintains permanent contact with similar services in other countries in order to monitor terrorism-related activities and suspects. Panama is a party to a number of bilateral treaties on judicial assistance in criminal matters with States in the region, the United States, the United Kingdom and Spain. The Committee would welcome:

- **Information on Panama's efforts to provide administrative assistance to, exchange information with, and establish treaties and agreements with additional States in order to widen its network of formal relationships and arrangements for expeditious cooperation in the prevention and suppression of terrorist acts;**
- **An outline of provisions and practices aimed at exchanging operational and intelligence information with other States and providing early warning on issues of concern; and**
- **An outline of the administrative mechanisms and structures which facilitate such exchanges.**

With regard to information on Panama's efforts to provide administrative assistance, Panama's State security is necessarily based on the well-being of its citizens. For that reason, Cabinet Resolution No. 34 of 21 June 2000, which provides the basis for Panamanian security policy, was issued.

This document acknowledges the multidimensional, diverse, harmonious, democratic and multilateral nature of security; it is based on the concept of security related to comprehensive and human development.

Therefore, Panama has established a State policy which guarantees nationals and non-nationals living in the national territory the tranquillity and peace necessary for harmonious coexistence and full development.

Consequently, Panama has signed a wide range of agreements with other States, specifically to extend its network of formal relationships and cooperate in the prevention and suppression of terrorist acts, such as the Commitment on the Strengthening of Coordination to Combat Terrorism and the Global Drug Problem and Related Crimes, signed by the Ministers of Foreign Affairs and Defence of Ecuador, Venezuela, Peru, Brazil, Colombia and Panama in Bogotá on 12 March 2003.

Panama is aware of the urgent need to establish treaties and agreements with other States with the objective of preventing and suppressing terrorist acts, and therefore participates actively in bilateral and multilateral agreements on important regional issues, such as disarmament and non-proliferation of weapons, in addition to other issues of concern or initiatives that may arise aimed at preventing and combating possible terrorist activities in the region.

With regard to an outline of the provisions and practices aimed at exchanging operational and intelligence information with other States and providing early warning on issues of concern, we would like to inform you that a permanent transmission system is currently being used which permits the Panamanian

intelligence authority to maintain secure and effective communication with the various Latin American intelligence services and enables a free-flowing exchange of information.

The details of procedures related to the continuous flow of information between Panama and other countries are confidential.

Similarly, through the Council for Public Security and National Defence, Panama has implemented cooperation mechanisms with Colombia's Administrative Department of Security (DAS) to review and restructure the mechanisms for the exchange of information and the production of joint intelligence.

Panama's National Police also maintains a system of permanent links with the national police of the Central American countries and the Colombian National Police, which makes it possible to exchange police requests and information.

Effectiveness of customs, immigration and border controls

1.13 **Pursuant to paragraphs 2 (c) and (g) of the resolution, States should enforce effective immigration, customs and border controls in order to prevent the movement of terrorists, the establishment of safe havens and the commission of terrorist acts. The Committee would be grateful for details regarding:**

- **The extent of cooperation and coordination between the different agencies with border control responsibilities, in addition to Customs and Immigration cooperation in the context of investigations. What are the modalities and tools used? What are the results of joint activities?**
- **The control strategies and methods that Customs uses to ensure the security of shipments entering and exiting its territory, using all modes of transport, against acts of terrorism. What role does the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade play in Panama's border control strategy?**

With regard to the extension of cooperation and coordination between the various agencies responsible for border control, in addition to the cooperation between Customs and Immigration in the context of investigations, in 2005 an inter-institutional committee was established which meets every two weeks at the headquarters of the Council for Public Security and National Defence to exchange information on the discharge of duties in the border regions and propose joint measures to deal with any illegal activities detected. The results of these joint activities are reflected in a reduction in the incidence of crime in the border regions and in the arrest and prosecution of nationals and non-nationals involved in international crime (trafficking in persons, weapons and drugs).

The control methods and strategies used by Customs to ensure the security of shipments entering and exiting its territory, using all modes of transport, against terrorist acts have been extended by means of Cabinet Decree No. 41 of 11 December 2002, "through which the provisions relating to customs regulations have been developed in accordance with the provisions of Act No. 41 of 1 July 1996", which adapted our customs regime to meet international requirements.

The Directorate General of Customs has increased the number of checkpoints in border areas and has made the role of the customs police more proactive, through

its Department of Customs Monitoring, with patrols along routes which were being used illegally for the entry of goods into Panama.

In December 2005, a camera surveillance system was introduced at our border posts with the Republic of Costa Rica, which is monitored simultaneously in the regional and head offices of that institution.

Annex

It should be added to the report that there is recent legislation on terrorist acts, as this was not included in the fourth report we submitted.

Legislative Assembly

Act No. 1
(Of 5 January 2004)

Which amends and adds provisions to the Penal and Judicial Codes and Act No. 35 of 1996 and repeals one article of the Penal Code and Act No. 15 of 1994 on industrial property.

Article 11. Article 389 of the Penal Code shall read as follows:

Article 389. Anyone who receives, deposits, trades in, converts or transfers money, securities, property or other financial resources, in the full knowledge that they are derived from activities related to drug trafficking, fraud, illicit arms trafficking, trafficking in persons, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, theft or international trafficking in vehicles or crimes against intellectual property in general, as provided under Panamanian criminal law, with the aim of hiding or concealing their illegal origin or assisting in evading the legal consequences of such punishable acts shall be sentenced to 5 to 12 years' imprisonment or 100 to 200 income-based day fines.